GOVERNMENT OF MALAYSIA

v.

MOHAMED AMIN HASSAN

HIGH COURT MALAYA, SEREMBAN
PEH SWEE CHIN J
[CIVIL APPEAL NO. 9 OF 1983]
9 JUNE 1984

CIVIL PROCEDURE: *Interpretation of O. 15 r. 1 (4) of the Subordinate Courts Rules - Application by respondent to add self as another plaintiff in his personal capacity - Three year limitation period - Application granted - Whether learned Magistrate had erred in allowing the application.*

The plaintiff had sued the Government of Malaysia as the Administrator of his deceased son's estate. The plaintiff himself was injured in the accident that killed his son. Now he applied to amend the pleadings by adding himself as a plaintiff under O. 15 r. 1 (4) of the Subordinate Courts Rules 1980. The three year period prescribed by the Public Authorities Protection Act 1948 within which any action against a public authority must be brought had expired. The Magistrate had allowed the amendment. The defendant, the Government of Malaysia appealed against the decision.

Held:
So long as the self-same person had sued as a party on the commencement of proceedings and there was any other capacity in which he could have validly sued but had not done so, he can now sue additionally in that other capacity not utilised earlier, subject to the Court's discretion.

[Appeal dismissed. No order as to cost.]

Cases referred to:
Hilton v. Sutton Steam Laundry [1945] 2 All ER 425
Davies v. Elsby Brothers Ltd. [1960] 3 All ER 672
Mitchell v. Harris Engineering Co. Ltd. [1967] 2 QB 703
Mabro v. Eagle Star & British Dominion Insurance Company Limited [1932] 1 KB 485

Legislation referred to:
Subordinate Court Rules 1980, O. 15 rr. 1(1), (2), (3), (4)
Rules of the Supreme Court 1965 [UK], O. 20 r. 5(2), (3), (4), (5)
Rules of the High Court 1980, O.20 r 5(4)

For the appellant/defendant - Mary Lim Thiam Suan; FC
For the respondent/plaintiff - Vijay Kumar Natarajan; M/s. Albar Zulkifly & Yap

JUDGMENT

Peh Swee Chin J:

This appeal involves a rather important matter of interpretation of O. 15, r. 1, sub-rule (4) of the Subordinate Courts Rules 1980 which is in words same as those in O. 20, r. 5, sub-rule (4) of the Rules of the High Court 1980. It will be desirable, in setting out sub-rule (4), to set

out O. 15 r. 1 sub-rules (1) and (2) of the Subordinate Courts Rules 1980:-

> *"Order 15 r. 1*
> 1. (1) Subject to O. 8, rr. 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his summons, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
>
> (2) Where an application to the Court for leave to make the amendment mentioned in para. (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the summons has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.
>
> (3) ...
>
> (4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under para. (2) if the capacity in which, if the amendment is made, the party will sue is one which at the date of issue of the summons or the making of the counterclaim, as the case may be, he might have sued.

When the action was first filed, within three years' period as prescribed by the Public Authorities Protection Act, 1948, one Mohamed Amin bin Hassan, sued as administrator of the estate of his deceased son killed in the accident in question. It appears that the said Mohamed Amin himself was badly injured in the same accident, and on a subsequent date i.e. 9 February 1982, he applied *inter alia*, to the Court to add himself as another plaintiff under O. 15, r. 1, sub-rule (4) this time in his personal capacity. Unfortunately, when he so applied, the three years' period of limitation had already expired. The ground of his application was that a medical report was not available earlier. The learned President, sitting as Magistrate, allowed the application despite the objections of learned Federal Counsel appearing for the defendants. From that part of the order granting leave to allow the said Mohamed Amin to add himself as another plaintiff in his personal capacity, the defendants have now appealed.

The learned Magistrate referred to the sub-rules set out above and referred to *Hilton v. Sutton Steam Laundry* [1945] 2 All ER 425, in which leave was refused to the plaintiff there to change the capacity in which she sued; *Davies v. Elsby Brothers Ltd.* [1960] 3 All ER 672, in which plaintiff was refused leave to amend the name of "Elsby Brothers" to "Elsby Brothers Ltd." the former having turned themselves into the latter; and to *Mitchell v. Harris Engineering Co. Ltd.* [1967] 2 QB 703.

In *Mitchell's* case on which the learned Magistrate relied, the Court of Appeal, considering the provisions of the English Rules of the Supreme Court similar to our sub-rules set out above, granted leave to amend the name of defendant from "Harris Engineering Company (Leeds) Ltd." to "Harris Engineering Co. Ltd.". Lord Denning**,** in his judgment, held that the O. 20, r 5 (2), (3), (4) and (5) of the English Rules of the Supreme Court, (similar to O. 15, r. 1 sub-rules (1), (2), (3), (4) and (5) herein) had removed the injustice of the kinds caused by cases mentioned above. He held, *inter alia*, that such provision was a most beneficial one, enabling the Courts to amend pleadings whenever justice of the case so required.

Before me, the learned Federal Counsel submitted that O. 15 r. 1 sub-rule (4) allowed only one party to alter his capacity in which he sued, so that, and in such a way, if the amendment was allowed, there would still be only one party with an altered capacity. Here she submitted that the said Mohamed Amin, under the guise of sub-rule (4) had wanted to add a new party in addition to the existing party before the amendment. She referred to *Mabro v. Eagle*

Star & British Dominion Insurance Company Limited [1932] 1 KB 485 where amendment was not allowed to substitute a new plaintiff.

Learned Counsel for respondent submitted that the learned President, sitting as a Magistrate, had not erred at all, referring to the grounds of decision of the learned Magistrate.

For my part, the literal reading of the sub-rule (4) itself is capable of two interpretations, viz., a strict interpretation and a liberal interpretation. The learned Federal Counsel's submission appears to be one of strict interpretation, because if a person alters his capacity, this presupposes that he abandons his former capacity and seeks a new one. A liberal interpretation in my view, however, will mean that so long the self-name person had sued as a party, on the commencement of proceedings and there was any other capacity in which he could have validly sued but had not done so, or had not wanted to do so, or in other words, he might have done so at the time of such commencement of proceedings, he can now sue additionally in that other capacity not utilised earlier, subject to the Court's discretion, of course.

It cannot be denied that sub-rule (4), like other sub-rules (2), (3) and (5) were made for the removal of the types of injustice caused by cases of the kinds mentioned above, and Lord Denning's observation mentioned above is therefore, with respect, quite apposite. It is equally true to say that these sub-rules in question, and for that matter, those similar provisions in the Rules of the High Court, 1980, confer express and unmistakable powers which apply only to those special circumstances within the scope of these sub-rules and could not have been intended to prejudice or remove *en masse* the right or benefit conferred by any statute of limitation. Thus, for the sake of illustration, assuming that the said Mohamad Amin had first sued in his personal capacity, at the time of commencement of proceedings, because he could not sue also as an administrator for not having then extracted his grant of letters of administration and assuming now that only after the expiry of period of limitation, he wanted to sue, in addition, as such administrator, because of the availability of the said grant of letters of administration, his application ought to have been refused, in my view, for he did not have that capacity and could not have sued in that capacity if he had wanted to at the commencement of proceedings.

The provisions in the English Rules of the Supreme Court 1965, similar to our O. 15, r. 1 was not in force when the case of *Mabro* (*supra*) was decided, so that it may be decided differently today on ground of genuine mistake etc. In any event, *Mabro's* case is clearly distinguishable from our instant case in that in the *Mabro's* case, a different man, who had not sued in the beginning, sought to join the "band-wagon", so to say, later on after the relevant period of limitation had expired, even though he was connected with the original and existing plaintiff in some material way.

I, for reasons stated above prefer the liberal interpretation of the sub-rule (4) indicated above. I therefore confirm the relevant order of the learned Magistrate and dismiss the appeal of the appellant. Since the cross-appeal of the respondent was abandoned at the hearing, I also dismiss the cross-appeal, with no order as to costs on both the respondent's cross-appeal and the appellant's appeal.

Also found at [1984] 2 CLJ 111